IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3620 OF 1991

Shankar Krishnaji Daddikar (Kulkarni) ..Petitioner

V/s.

Dhondiba Vithu Hatkari & Anr. ..Respondents.

Mr.V.S.Gokhale for the petitioner.

Mr.V.S.Kapse for respondents nos. 1 A to 1 H.

None for respondent no.2.

CORAM : R.V.MORE, J.

DATED : 26TH JUNE, 2007.

P.C. :-

1. The writ petition under Article 227 of the Constitution of India takes exception to the order dated 4th January, 1991 passed by the learned Member Maharashtra Revenue Tribunal at Kolhapur in Revision Application No.MRP.K.P.53/1989. The facts of the present petition are as follows :-

2. The dispute is about land Gut No. 336 admeasuring about 6 Hectare and 85 Areas situated at village Aralgundi, Taluka Bhundargad, District Kolhapur. There is no dispute that the petitioner is the landlord and the respondent no.1 is the tenant of the suit land. Admittedly, the mother of the present

petitioner Tanubai was the landlady of the suit premises and she was widow on 1.4.1957 and hence tillers day was postponed. On 31.10.1982 the petitioner's mother Tanubai died and the petitioner became owner of the suit property as the legal heir and representative of deceased Tanubai.

3. The petitioner gave notice of termination of tendency on 24.10.1983 to the respondent nos. 1 and 2 and thereafter filed an application for possession under section 31(3)(ii) of the Bombay Tenancy of Agricultural Lands Act, 1948.

4. The learned Tahshildar who heard and disposed of petitioners application under section 31(3)(ii) after hearing both the sides came to the conclusion that the respondent no. 1 is the tenant of the suit property and respondent no. 2 is not tenant in the suit property. He further came to the conclusion that petitioner is not entitled for the possession of the suit property since he has not proved that (i) the suit land was standing in his name as the landlord as on 1.1.1952, (ii) the extent of his holding of his own land personally cultivated is less than the ceiling area and (iii) The petitioner failed to prove that the income of cultivation of the land for which he

is claiming the possession under section 31 (3)(ii) is a principle source of income for his maintenance. In view of above finding, the learned Tahsildar by his order dated 26.7.1985 dismissed the petitioners' application in Tenancy Case No.3/1983. The petitioner thereafter filed tenancy Appeal No.32/1985 before Sub Divisional Officer at Gadhinglaj, Division Gadhinglaj. The learned Sub Divisional Officer, Gadhinglaj after hearing both sides concurred with the finding of the Tahsildar to the effect that income by cultivating of the suit land would not be principle source of income of the petitioner for his maintenance and therefore dismissed the application.

5. The petitioner thereafter preferred revision being Revision Application No. 93/1989 before M.R.T. at Kolhapur. The same was also dismissed by the learned Member of Maharashtra Revenue Tribunal, Kolhapur by his order dated 4.1.1991 on the ground that the petitioner's economic condition is sound and he held 26 acres of the land. In addition to this, one of his son is in service and other is doing agricultural work. M.R.T. also held that the income from the suit land is not the principle source of income for petitioner's maintenance which he would be able to get if he succeeds.

6. After hearing learned counsel for the petitioner Mr.Gokhale and going through the reasoning recorded by the lower authorities, I am of the considered view that no interference is called for under Article 227 of Constitution of India. Section 31 of B.T. and A.L. Act, 1948 speaks about conditions of the termination of tenancy. Sub clause (c) of section 31(a) reads as follows :

> 31A. The right of landlord to terminate a tenancy for cultivating the land personally under section 31 shall be subject to the following conditions:-
>
> (a)...
>
> (b)...
>
> (c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

7. All the three authorities below after considering evidence held that the petitioner holds 26 acres of the land and some land in his possession raise cash crops like sugar-cane. The petitioner also gets income by way of pension. The concurrent finding is also recorded that income out of half area of the suit land which petitioner would be entitled to get would

not be principle source of income for his maintenance. In view of the concurrent finding of the above facts, I am of the considered view that the order does not require any interference. The lower authority have taken correct view of the matter and dismissed petitioner’s application. I find no error in the order in the order impugned in petition and, therefore, no reason to interfere under Article 227 of the Constitution of India. The petition therefore dismissed with no order as to costs.

(R.V.MORE, J.)